

EXHIBIT E

[PUBLIC VERSION]

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

CUSTODIA BANK INC.,) Civil Number
) 22-cv-00125-SWS
Plaintiff,)
)
v.)
)
FEDERAL RESERVE BOARD)
OF GOVERNORS and FEDERAL)
RESERVE BANK OF)
KANSAS CITY,)
)
Defendants.)

- C O N F I D E N T I A L -

Deposition of
TARA HUMSTON
November 3, 2023
8:04 a.m.

Reported by: Bonnie L. Russo
Job No. 6153223

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P R O C E E D I N G S

(8:04 a.m.)

TARA HUMSTON,

being first duly sworn, to tell the truth, the
whole truth and nothing but the truth,
testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. SCARBOROUGH:

Q. Ms. Humston, good morning. My name
is Ryan Scarborough. I represent Custodia
Bank.

How long have you worked at the
Kansas City Fed?

A. 25 years.

Q. And have you ever worked at the
board of governors?

A. No.

Q. If I refer to the board, do you
understand that to refer to the board of
governors?

A. Yes.

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1 A. That is correct.

2 Q. And custodial services is just a
3 fancy term for like a safe deposit box, right?

4 A. I wouldn't necessarily use that
5 definition. I'm not sure if that's how it's
6 defined.

7 Q. Is a safe deposit box one form of a
8 custodial service?

9 A. Yes.

10 Q. And there are other forms as well,
11 correct?

12 A. That is correct.

13 Q. State-chartered banks are permitted
14 to do anything that national banks can do,
15 right?

16 MR. MICHAELSON: Objection. Form.

17 THE WITNESS: Yes. I believe most
18 -- yes, banks are permitted to do anything a
19 national bank is permitted to do.

20 BY MR. SCARBOROUGH:

21 Q. And their abilities to provide
22 banking services are coextensive of what

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1 A. I would say it's been a novel
2 activity that's come into banking.

3 Q. And there are banks in the Federal
4 -- excuse me.

5 There are banks in the Federal
6 Reserve system that provide custodial services
7 for digital assets, right?

8 A. Yes, I believe that's correct.

9 Q. And examples of banks are -- include
10 -- strike that.

11 Examples of banks that provide
12 custodial services for digital assets include
13 Bank of New York Mellon, right?

14 MR. MICHAELSON: I just instruct you
15 not to answer that question to the extent it
16 would reveal confidential supervisory
17 information confidential to the Fed. If you
18 know, you can answer this question based on
19 publicly available information. You can
20 answer.

21 THE WITNESS: I'm not sure if what I
22 know is public or not in talking to my New York

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1 Q. Now, there is nothing illegal about
2 a bank providing custodial services for
3 cryptocurrency assets, right?

4 A. At this time I'm not aware of it
5 being illegal.

6 Q. Would you agree it's a legally
7 permissible activity?

8 MR. MICHAELSON: Objection. Form.

9 THE WITNESS: Legally permissible to
10 custody those assets.

11 BY MR. SCARBOROUGH:

12 Q. Are you aware that the OCC permits
13 national banks to provide custodial services
14 for crypto assets?

15 A. I believe that's their regulation.

16 Q. Do you know that the OCC issued an
17 interpretive letter in July 2020 opining that
18 providing custodial services for crypto assets
19 is a legally permissible activity?

20 A. Yes, I know the OCC issued that
21 letter.

22 Q. And that's around the same time that

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1 MR. MICHAELSON: Objection. Form.

2 THE WITNESS: No, I was not working
3 with them directly.

4 BY MR. SCARBOROUGH:

5 Q. Were there people at the Kansas City
6 Fed who worked directly with representatives of
7 Wyoming in connection with the SPDI
8 legislation?

9 A. I wouldn't consider it working with
10 them, but I do know some from my team had
11 reviewed drafts and had discussions.

12 Q. Would it be fair to characterize it
13 as consultation?

14 A. I can't speak -- I wasn't part of
15 those conversations, but they sent us drafts to
16 review.

17 Q. Who from your staff had -- had
18 discussions with representatives from Wyoming?

19 A. To my knowledge, it was primarily
20 Jackie Nugent.

21 Q. Did Esther George?

22 A. Esther did have a conversation or --

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1 I can't speak to how many. I know she had some
2 contact at some point.

3 Q. And did her contacts include
4 speaking with the commissioner of the Wyoming
5 Division of Banking, Albert Forkner?

6 A. I do recall her saying she had
7 talked with Albert Forkner.

8 Q. And did you have any conversations
9 with Wyoming representatives?

10 A. At the time Albert would have been
11 the commissioner of Wyoming, and so in
12 supervising institutions in Wyoming, I would
13 have had periodic contact with Albert. I don't
14 recall a specific meeting just to discuss the
15 SPDI charter.

16 Q. You mentioned that you had regular
17 conversations with Wyoming more generally in
18 connection with their supervision -- was that
19 in connection with their supervision of
20 entities in Wyoming?

21 A. Yes. We work with the state
22 commissioners on the institutions that we

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1 jointly supervised through the dual banking
2 system.

3 Q. Okay. Do you have any criticism of
4 the Wyoming Division of Banking?

5 A. No specific -- it's not a criticism,
6 but we often help some of our state
7 counterparts because they lack the resources to
8 be able to supervise some of the entities in
9 their state.

10 Q. Did Wyoming have experience
11 personnel performing supervisory roles?

12 A. For traditional banking charters,
13 they had staff that were -- had the skill set
14 needed to supervise traditional bank charters.

15 Q. They were qualified?

16 MR. MICHAELSON: Objection. Form.

17 THE WITNESS: Qualified for what?

18 BY MR. SCARBOROUGH:

19 Q. For supervising traditional bank
20 charters, as you said?

21 A. They had individuals I think our
22 team would say were qualified.

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1 Q. And they had individuals who were
2 also competent, correct?

3 A. Competent in...?

4 Q. Supervising traditional bank
5 charters.

6 A. I think if we say they were skilled,
7 they would be competent in supervising a
8 traditional bank charter.

9 Q. And they had individuals who were
10 well trained in supervising traditional bank
11 charters, right?

12 A. Wyoming Department of Banking had
13 training available to their examiners. Some of
14 the states rely on the Federal Reserve's
15 training, so I don't know to what extent their
16 state relied on ours, but many of our states
17 are not able to fully utilize their own
18 training programs.

19 Q. But your experience with Wyoming was
20 that they -- the individuals you dealt with
21 were well trained, correct?

22 A. I don't deal with many of their

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1 examiners directly, so I don't have personal
2 representation on the training level of their
3 staff. But more generally I think my team
4 found they have examiners that would be skilled
5 in their job.

6 Q. Now, in spending -- in developing
7 the SPDI legislation, Wyoming had several years
8 of experience and focus on learning and
9 developing a cryptocurrency supervisory regime;
10 is that fair?

11 A. I -- I don't know that they trained
12 their exam staff on that supervisory regime.
13 My understanding is they worked with an
14 external party to develop a supervisory regime,
15 and I heard from Commissioner Forkner at the
16 time that they were working with them to
17 develop the supervisory program. But to the
18 extent their team was ever trained on that
19 program, I don't know how successful that was.

20 Q. Would it be fair to say that at the
21 time you -- the Kansas City Fed received the
22 first request for a master account from a SPDI

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1 terminology here. You say legal to apply for a
2 master account.

3 Do you understand that to mean the
4 same thing as being legally eligible for a
5 master account?

6 A. To be legally eligible to apply for
7 a master account.

8 Q. Okay. And so that determination as
9 to whether Custodia was legally eligible to
10 apply for a master account was made by the
11 board of governors, wasn't it?

12 A. I don't recall.

13 Q. Okay. Do you have any reason -- any
14 basis to dispute that that determination was
15 made by the board of governors?

16 A. I can't say either way.

17 Q. Would you agree that Custodia's
18 request for a master account was one of several
19 applications that presented the policy question
20 about whether a novel chartered institution
21 should get access to the payment system?

22 MR. MICHAELSON: Objection. Form.

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1 THE WITNESS: Custodia was one of
2 other entities that were bringing this question
3 to light.

4 BY MR. SCARBOROUGH:

5 Q. Was Custodia the first
6 SPDI-chartered institution to request a master
7 account?

8 A. Yes, I believe they were the first.

9 Q. Let me hand you a document which
10 we'll mark as Exhibit 147.

11 MR. SCARBOROUGH: Oh, let's not mark
12 this one as 147.

13 THE COURT REPORTER: Let's not?

14 MR. SCARBOROUGH: Yeah. I
15 apologize. Can we take the sticker off?

16 (Discussion off the stenographic
17 record.)

18 BY MR. SCARBOROUGH:

19 Q. So I'm going to hand you a
20 document -- sorry. Yeah. I'm going to hand
21 you a document that has been marked as Exhibit
22 10. I will try to catch that next time.

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1 A. True.

2 Q. Okay. How long does it typically
3 take for a master account to be --

4 A. For a traditional --

5 Q. -- decided?

6 A. -- commercial bank, it can be done
7 in a week's time or less.

8 Q. Okay. In terms of the time line
9 that you referenced here about the time line is
10 probably, technically accurate about -- is that
11 referencing the fact that the request just sat
12 at the Fed before Custodia was hit out of left
13 field with the proposed account access
14 guidelines?

15 MR. MICHAELSON: Objection. Form.

16 THE WITNESS: No. I mean, in the
17 e-mail, we are not seeing an attached picture.
18 I may have been referring to that. I don't --
19 I don't recall what that looked like.

20 But, I mean, I would be speculating
21 to say if I am referring to what was in the
22 picture attached --

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1 for what? Supervisory --

2 A. Supervision and regulation.

3 Q. Oh, supervision and regulation.

4 Okay. And an SR letter is different
5 than an S letter, correct?

6 A. Yes.

7 Q. Do you know what the S for S letter
8 stands for?

9 A. I do not.

10 Q. Okay. And so with SR letters, you
11 see those frequently in your role at the Kansas
12 City Fed, correct?

13 A. Yes, I would say I see those on a
14 regular cadence.

15 Q. Okay. With regard to an S letter,
16 the only time in your experience that you have
17 seen one is the S letter that was issued in
18 connection with implementing or
19 operationalizing the account access guidelines;
20 is that fair?

21 A. To my recollection, that's the only
22 one.

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1 to identify which public officials were being
2 referenced in your letter concerning the
3 responsible development of digital assets and
4 their integration into the financial system?

5 A. Yeah. As I said in the deposition I
6 think three times here just now, I do not know
7 who that is referring to in these public
8 officials.

9 Q. Okay. And turning to the second
10 page of the letter, in the --

11 A. In the draft or the letter?

12 Q. Oh, I'm sorry. Exhibit 158, the
13 final letter.

14 In the penultimate paragraph, you
15 start out: "We understand the urgency with
16 which you will need to make business decisions
17 for Custodia," and then you say: "I hope that
18 you understand the precedent-setting decision
19 involving nontraditional charters and new
20 activities is one that the Federal Reserve Bank
21 of Kansas City must weigh carefully."

22 Was that your view at the time, that

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1 the decision on whether to grant Custodia a
2 master account was a precedent-setting decision
3 for nontraditional charters?

4 A. Yes. From very early on I think
5 since the formation of the SPDI charters, we
6 had felt that -- that nontraditional nature and
7 the word of being "nontraditional" or "novel,"
8 that would be precedent setting, because in my
9 mind nontraditional and novel means it's one of
10 the first times you're seen in an early stage.
11 So it would be the first of its kind.

12 And so any other federal district
13 getting a request or having a state form, a
14 state charter, this would be influential to
15 another reserve bank's decision.

16 Q. Okay. And this letter would have
17 gone out to the Custodia on April 15, 2022,
18 right?

19 A. That would be my understanding the
20 way it's stated.

21 MR. SCARBOROUGH: Okay. I'm going
22 to hand you what we'll mark as Exhibit 160.

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1 Q. What's your understanding of who
2 would have had input on the recommendation memo
3 to Esther George?

4 A. That we were writing to Esther, it
5 would have -- if -- I don't know what Chris,
6 his involvement was in the memo itself, but
7 Christi May-Oder and Judith Hazen, myself, and
8 we would have asked for our legal colleagues to
9 ensure that we -- since we are under this
10 lawsuit, they would be reviewing it as well
11 from a legal basis.

12 Q. Okay. So Christi May-Oder, Judith
13 Hazen, your legal colleagues, and yourself
14 would have had input on it. You're not aware
15 of whether Chris Gaul-Pearson did.

16 Anybody else that you're aware of
17 having input on the recommendation memo to
18 Esther George?

19 A. I mean, I don't know if Chris
20 Gaul-Pearson -- I mean, he reports to Christi,
21 so she may have assigned it to him or someone
22 on her team to begin the beginnings of a memo.

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1 But, no, I'm not aware of others.

2 Q. Do you know whether anybody from the
3 board of governors edited the memo before it
4 was provided to Esther George?

5 A. I would not be aware of that.

6 Q. Okay. Would it be appropriate for
7 anybody at the board of governors to edit the
8 memo to Esther George?

9 A. If there was a component where we
10 were speaking on behalf of something
11 represented by the board, our team might
12 consult with the board on a particular part, if
13 we are representing something that falls with
14 the board of governors's realm.

15 But in this case, I don't recall if
16 that was necessary.

17 Q. What parts of the recommendation
18 memo relating to Custodia master account
19 request would have been appropriate for the
20 board of governors to comment or edit on or
21 edit?

22 A. I would only think of the legal

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1 before that could be communicated to Custodia?

2 A. Could you say that once again --

3 Q. Sure.

4 A. -- is that my understanding or are
5 you saying --

6 Q. Yes, I am asking about your
7 understanding.

8 A. It was my understanding we needed to
9 wait for Matt Eichner to respond to what we had
10 sent him.

11 Q. Was it also your understanding that
12 this response from Matt Eichner needed to occur
13 before the board voted on the membership
14 application?

15 A. No, that was not my understanding.

16 Q. Okay. Was it your understanding
17 that the Kansas City Fed was going to wait to
18 issue its denial of Custodia's master account
19 request until the board of governors informed
20 Custodia that its membership application was
21 denied?

22 A. That was a decision we were weighing

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1 locally in that did it make sense for us to
2 hold our denial letter in case the board went a
3 direction we were not expecting because we had
4 recommended denial. We did not -- I did not
5 know with certainty if any of the governors had
6 different views, and it was -- their vote would
7 come out differently.

8 And so of the vote came out
9 differently, it might cause us to rethink our
10 analysis because some of the factors that we
11 had included -- maybe the fact pattern would
12 change if they were a member institution.

13 Q. So the next morning the board of
14 governors voted 7-0 to deny membership to
15 Custodia; is that correct?

16 A. Yes.

17 Q. And they issued a denial letter that
18 morning, right?

19 A. I don't know when it was in the day.
20 I believe it was morning.

21 Q. Okay. Is it your understanding that
22 the rollout of the denial of the membership and